

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10494 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UMA TRAVELS - PROPRIETOR SHAH UMANG NATVARLAL

Versus

DIVISIONAL RAILWAY MANAGER (COMMERCIAL)

Appearance:

MR TS NANAVATI for Petitioner

MRS SIDDHI D TALATI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision:26/04/99

C.A.V. JUDGEMENT

The prayer of the petitioner in this writ petition is for quashing communication dated 25.11.1998 and directing the respondent No.1 to consider the application of the petitioner for allotment of Additional Railway Travellers' Service Agents Licence for the City of Ahmedabad. The further prayer is that the respondent be restrained from making any allotment of Additional

Railway Travellers' Service Agents Licence for the City of Ahmedabad.

2. The brief facts of the case are that in pursuance of Notification dated 4.8.1997 in daily newspapers the petitioner applied for allotment as Additional Railway Travellers' Service Agents. Applications were invited for such appointment for Vadodara Railway Station as well as for Ahmedabad Railway Station. On 24.6.1998, the respondents reinvented applications by publishing another Notification in newspaper vide Annexure 'B'. The petitioner, by speed-post, despatched his application with requisite documents and certificates. Thereafter, inspection of the premises of the petitioner was done by the Assistant Commercial Manager on 28.11.1998. Inspection report was prepared on which signature of the petitioner was obtained. No additional demand was made from the petitioner with regard to production of documents. The petitioner received communication dated 25.11.1998 that he was not found fit for selection for appointment of Additional Railway Travellers' Service Agents Licence. This order is said to be arbitrary and violative of Article 14 of the Constitution of India. The two notifications dated 4.8.1997 and 24.6.1998 published in the local newspapers are also said to be bad in law and contrary to the Rules especially the notification dated 24.6.1998.

3. In response to the notice, counter affidavit was filed by the respondent No.1, in which it was stated that in response to the first notification, applications for Vadodara Railway Station were only considered and by the second notification, applications for Ahmedabad Railway Station were invited and considered. The petitioner did not supply any proof pertaining to telephone and also failed to produce the current and latest documents as required in the notification published in newspapers. The Rent Receipt produced by the petitioner was valid from 1.1.1997 to 30.6.1997 and up-to-date receipt was not filed. It was thus found that the petitioner's up-to-date tenancy in the premises was not proved. The Certificate of Registration of the firm filed by the petitioner also expired and it was valid from 1994 to 1997 and the current renewal certificate was not found to be on record. Similarly, the petitioner failed to produce proof of telephone along with application etc. and as such the petitioner's application was rejected for non-compliance of the conditions mentioned in the notification.

4. During the course of argument, the learned

Counsel for the respondents raised preliminary objections that the petition is not maintainable, inasmuch as there is provision for appeal and no appeal has been filed by the petitioner against the impugned communication. Reference was made to Sections 9(1) and 9(2) of the Railway Travellers' Service Agents Rules, 1985. (hereinafter referred to as 'the Rules of 1985'). Rule 9(1) of the aforesaid Rules provides that an appeal shall lie against every order of the competent authority made under these Rules to the Central Government. Sub-rule (2) of Rule 9 provides that the appeal under Sub-rule (1) shall be preferred within 30 days from the date on which the order appealed against is communicated to the appellant. From the above Rules, it is clear that there is specific provision for filing appeal against such communication and since appeal was not filed, the writ petition is not maintainable.

5. Learned Counsel for the petitioner however, argued that there was no necessity of filing appeal, inasmuch as he has challenged in this petition, the subsequent notification dated 24.6.1998, inasmuch as it is in contravention of Rule 3 of the Rules of 1985. Actually vires of the Rules aforesaid has not been challenged in the writ petition. If the public notification in newspaper was contrary to Rule 3, it could be agitated before the Appellate Authority and there was no reason why the Appellate Authority could not have considered the contention that the notification inviting application itself was defective. Non-filing of appeal, therefore, is the ground for not entertaining this writ petition for admitting or for further hearing.

6. However, as the learned Counsel for the parties were heard on merit and affidavits, counter affidavits and rejoinder affidavits were considered, on merit also I find the writ petition requires no admission for final hearing. The reason is Rule 3 of the Rules of 1985 lays down three requirements for a person who is applicant for licence as Travel Agent. First is that the person should be in possession of the latest Income Tax clearance certificate. Second is that such person is having office and premises properly maintained with adequate convenience and amenities in the City so as to accommodate the visit of sufficient number of customers, and third is that the person has not been convicted in a criminal case involving moral turpitude. If these conditions are fulfilled, a person can apply for issue of licence under Rule 4 to act as Agent. These three conditions were specifically mentioned in the notification dated 4.8.1997 published in newspapers. In

the second notification dated 24.6.1998 also these conditions were disclosed. In these two notifications, proforma of application was also given. This proforma cannot be said to be contrary to Rule 3. For proper appreciation of availability of office and premises properly maintained with adequate convenience and amenities, if it was prescribed in the proforma that it should be stated the reasons, inter-alia, whether the business premises are owned or on hire/lease with supporting documents, it does not contravene Rule 3 in any manner. Likewise, sr.no.9 of the proforma requiring proof of telephone, telex etc. showing availability of amenities also does not in any way contravene Rule 3(ii) of the aforesaid Rules.

7. The contention of the learned Counsel for the petitioner has been that the applications were scrutinised and about 70 applications were found to fall within the zone of consideration and that the petitioner's application was one such application which fell within the zone of consideration. Not only this, the premises of the petitioner was inspected by the officers of the respondents and at no point of time it was informed that additional information is required from the petitioner. It was further argued that once the application of the petitioner fell within the zone of consideration, the application could not have been rejected on technical ground that it was not supported by complete documents. What is contained in communication at Annexure 'D' dated 25.11.1998 is that the petitioner was not selected for granting of licence at Ahmedabad due to incomplete documents. This communication, according to the learned Counsel for the petitioner suffers from vice of non-application of mind and is also not a speaking communication indicating as to what further documents were required to be furnished by the petitioner. However, from the counter affidavit, it is clear that the documents furnished by the petitioner were incomplete, inasmuch as the latest rent receipt was not furnished showing that the petitioner was actually a tenant in the accommodation disclosed in the application. Likewise, Registration of Certificate of the business of the petitioner was also not up-to-date, and the proof that the telephone connection stood in the name of the petitioner was also not furnished. Xerox Copy of these documents have been furnished in this writ petition. From the rent receipt dated 1.1.1997 it appears that rent upto 30.6.1997 was paid whereas the notification inviting application was issued on 24.6.1998. Thus, the proof that the petitioner was tenant as on the date of the notification or as on the date of making application was

not furnished. Similarly, Certificate of Registration of the business which has been produced being No.20313 was also not valid on the date of application. In the telephone bills furnished before the authority concerned, discrepancy was pointed out so far as the name of the petitioner is concerned. The first two bills are in the name of M/s. Super Foil Works, whose proprietor was Umang N Shah. The third bill is in the name of Umang Natverlal Shah, so also the fourth bill. The fifth and sixth bills are in the name of M/s Super Foil Works.

8. No doubt, the premises of the petitioner was inspected, but mere inspection does not amount that the petitioner fell within the zone of consideration. In the first scrutiny, applications exceeding 70 including the petitioner's were excluded from the zone of consideration for want of one reason or the other. 70 applications were kept in the zone of consideration and for further consideration it was thought necessary to inspect the premises to ascertain whether proper facilities were available or not. If that inspection was done, it cannot be said that further consideration of the application was prohibited or barred under the Rules. Even if it was found from the local inspection that the premises was in possession of the petitioner and it was having facilities like telephone etc., it was required to be considered by the authority in what capacity the petitioner was occupying the premises and whether the telephone connection stood in the name of the petitioner or not. It appears from the counter affidavit that on these points, the authorities were not satisfied and as such the application of the petitioner was rejected. No doubt, the communication is not happily worded but at the same time, it is not expected from the administrative authorities to pass a detailed and speaking order as if from a judicial authority. The mind of the competent authority while rejecting the application of the petitioner was disclosed in the counter affidavit. To my mind, it cannot be said that the petitioner's application was not taken up for consideration on merits. The application of the petitioner was therefore rightly rejected by the authorities. There is thus, no merit in this petition which is liable to be dismissed.

This Special Civil Application is accordingly dismissed. No order as to costs.

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msp.